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8 *Counsel for Lead Plaintiff Guangyi Xu*

9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA

11 GUANGYI XU, Individually and on
12 behalf of all others similarly situated,

13 Plaintiff,

14 v.

15 CHINACACHE INTERNATIONAL
16 HOLDINGS LTD., SONG WANG, JING
17 AN, and KEN VINCENT QINGSHI
18 ZHANG,

19 Defendants.

Case No: 2:15-cv-07952-CAS (RAOx)

**LEAD PLAINTIFF'S UNOPPOSED
MOTION FOR ENTRY OF
JUDGMENT PURSUANT TO
FEDERAL RULE OF CIVIL
PROCEDURE 58(d) AND
DISMISSAL PURSUANT TO
FEDERAL RULE OF CIVIL
PROCEDURE 4(m)**

Motion to Dismiss filed: Oct. 14, 2016

Judge: Hon. Christina A. Snyder

21
22 Lead Plaintiff Guangyi Xu ("Plaintiff"), by his undersigned attorneys,
23 individually and on behalf of all other persons similarly situated, hereby files this
24 Unopposed Motion to: (1) enter judgment, pursuant to Rule 58(d) of the Federal Rules
25 of Civil Procedure, in favor of defendant ChinaCache International Holdings, Ltd.,
26 consistent with its January 9, 2017 opinion and order but this time with prejudice; and
27 (2) dismiss all claims brought by Plaintiff against defendants Song Wang, Jing An, and
28

1 Ken Vincent Qingshi Zhang (the “Individual Defendants”), pursuant to Rule 4(m),
2 without prejudice.

3 In support thereof, Plaintiff alleges as follows:

4 1. On September 14, 2016, Plaintiff filed his Second Amended Complaint
5 for Violation of the Federal Securities Laws (ECF No. 43) (the “Second Amended
6 Complaint”).

7 2. On October 14, 2016, defendant ChinaCache International Holdings, Ltd.
8 (“ChinaCache”) filed its Motion to Dismiss the Amended Complaint (ECF No. 46).

9 3. On January 9, 2017, the Court held a hearing on ChinaCache's motion to
10 dismiss and granted the motion without prejudice, allowing Plaintiff until January 30,
11 2017 to file a third amended complaint (ECF No. 53).

12 4. Plaintiff elected not to file a third amended complaint, and the January 30,
13 2017 deadline has now lapsed.

14 5. Despite Plaintiff’s good-faith efforts to effectuate service upon the
15 Individual Defendants, pursuant to Fed. R. Civ. P. 4(f) and the Hague Convention, to
16 date he has been unable to effectuate service on the Individual Defendants.

17 6. Rule 4(m) of the Federal Rules of Civil Procedure provides that, in the
18 event that “a defendant is not served within 90 days after the complaint is filed, the
19 court – on motion or on its own after notice to the plaintiff – must dismiss the action
20 without prejudice against that defendant....” Fed. R. Civ. P. 4(m).

21 7. Counsel for ChinaCache has advised Plaintiff’s counsel that ChinaCache
22 does not object to Plaintiff’s request that the Court enter judgment in accordance with
23 its January 9, 2017 opinion and order, although this time with prejudice, (ECF No. 53).

24 WHEREFORE, Plaintiff respectfully requests that the Court: (1) enter judgment,
25 pursuant to Rule 58(d) of the Federal Rules of Civil Procedure, in favor of defendant
26 ChinaCache International Holdings, Ltd., and against Plaintiff, with prejudice and
27

1 otherwise consistent with its January 9, 2017 opinion and order; and (2) dismiss all
2 claims brought by Plaintiff against defendants Song Wang, Jing An, and Ken Vincent
3 Qingshi Zhang, pursuant to Rule 4(m), without prejudice as to defendants Song Wang,
4 Jing An, and Ken Vincent Qingshi Zhang.

5 Dated: February 28, 2017

Respectfully submitted,

7 **THE ROSEN LAW FIRM, P.A.**

8 /s/ Laurence M. Rosen

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15 and

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22 *Counsel for Lead Plaintiff and the Class*

CERTIFICATE OF SERVICE

I hereby certify that on February 28, 2017, I electronically filed the foregoing *Lead Plaintiff's Unopposed Motion for Entry of Judgment Pursuant to Federal Rules of Civil Procedure 54(b) and Dismissal Pursuant To Federal Rule Of Civil Procedure 4(m)* with the Clerk of Court using the CM/ECF system, which will send notification of such to all CM/ECF participants.

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